

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JUAN ALVARADO

Petitioner,

No. C 12-3731 PJH (PR)

vs.

C. GIBSON, Warden,

**ORDER DENYING MOTION  
FOR RELIEF FROM  
JUDGMENT**

Respondent.

Petitioner, a California prisoner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was denied as successive on September 26, 2012, and petitioner has now filed a motion for reconsideration that the court will construe as a motion for relief from final judgment pursuant to Fed. R. Civ. P. 60(B).

Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be made within a "reasonable time," and as to grounds for relief (1) - (3), no later than one year after the judgment was entered. See Fed. R. Civ. P. 60(b). Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 60(b) provides a mechanism for parties to seek relief from a judgment when "it is no longer equitable that the judgment should have prospective application," or when there is any other reason justifying relief from judgment. *Jeff D. v. Kempthorne*, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting Fed. R. Civ. P. 60(b)).

1 Petitioner has filed this motion well past one year after judgment was entered so the  
2 motion is untimely. Regardless, petitioner presents no arguments why he should be  
3 provided relief. He requests an opportunity to present new arguments on why the petition  
4 is not successive as the prior person aiding him did not raise all possible grounds for relief.  
5 Yet, petitioner does not describe the new grounds he wishes to raise. The motion is denied  
6 as it is untimely and lacks merit. If petitioner wishes to proceed with a second petition he  
7 must obtain permission from the Ninth Circuit.

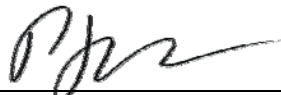
### 8 CONCLUSION

9 The motion for reconsideration (Docket No. 11) is **DENIED**.

10 Because reasonable jurists would not find the result here debatable, a certificate of  
11 appealability ("COA") is **DENIED**. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)  
12 (standard for COA). The clerk shall close the file.

13 **IT IS SO ORDERED.**

14 Dated: February 21, 2014.



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PHYLLIS J. HAMILTON  
United States District Judge

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